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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/335,377	06/17/1999	JOHN R. PLATE	02900.00004/	6413

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EXAMINER

CULBRETH, ERIC D

ART UNIT	PAPER NUMBER
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3616

DATE MAILED: 05/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/335,377

Applicant(s)

PLATE ET AL.

Examiner

Eric D Culbreth

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-19 and 22-33 is/are allowed.
- 6) ☒ Claim(s) 20 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laverda in view of Van Der Lely et al (both of record).

Laverda discloses axle 3 connected to frame 1a (i.e., the vehicle body 1 is supported on appendage or member 1a) for relative movement and a system (valves 14, 18) for locking the axle relative to the frame when the frame is tilted more than a predetermined angle (relative to the axle; see column 3, lines 41-51, where automatic leveling ceases and the hydraulic circuit becomes inoperative when the maximum angle is reached). However, Laverda does not disclose a support for supporting a load, the support being pivoted to elevate the load relative to the frame. Van Der Lely et al discloses a housing 2 supporting a load (mowing platform 1 and elevator at column 1, lines 43-45), the support being pivoted at shaft 3 to elevate the load 2 relative to the frame (column 1, lines 48-52). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Laverda to include a support bearing a load pivoted on the frame as taught by Van Der Lely et al in order to harvest crops, as Laverda's vehicle is a harvesting machine.

Regarding claim 21, in the combination Laverda's limit switch 34 senses when the frame is tilted by more than a maximum or predetermined angle.

Response to Arguments

3. Applicant's arguments filed 3/12/03 have been fully considered but they are not persuasive.

In response to applicant's argument on page 2 of the remarks that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Van Der Lely et al teaches attaching a movable mowing platform to harvester such as Laverda. Noting applicant's remarks, it is not necessary for Laverda to suggest a movable platform or for Van Der Lely et al to suggest an automatic leveling harvester; if that were the case, both these references would be applicable as 102 rejections against the claims. Van Der Lely et al teaches attaching a movable platform to a harvester, and the automatic leveling aspect of Laverda would not preclude the combination. Van Der Lely et al's teaching of a movable platform on a harvester is a teaching in the combination to the skilled artisan to put a movable platform on a harvester — any harvester — which would include Laverda's harvester.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re*

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Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In the combination as applied to the references, Laverda teaches those features not taught by Van Der Lely et al.

Regarding the arguments on page 3 of the remarks that the examiner has used applicant's disclosure as a source to pick and choose elements from Laverda and Van Der Lely et al, this is not persuasive because the combination involves the gist of Laverda's invention (an automatic leveling harvester) and the very invention of Van Der Lely et al (a moving platform as stated in Van Der Lely et al's abstract) as the basis and teaching of the combination, with Van Der Lely et al's teaching of placing a moving platform on a harvester (Laverda is a harvester) as a motivation for the combination.

Further in response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Finally, on pages 3-4 of the remarks the applicant argues that Van Der Lely et al in the combination does not teach a support for supporting a load, the load being pivoted to elevate relative to the frame. However, when Van Der Lely et al teaches that housing 2 supports mowing platform or load 1 as broadly recited (column 1, lines 43-45 of Van Der Lely et al) and that mowing platform 1 and housing 2 are movable upwardly about shaft 3 by a lifting cylinder

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(column 1, lines 48-51 of Van Der Lely et al), this is a teaching of a support supporting a load and pivoted to elevate relative to the frame as broadly recited in the claims.

Allowable Subject Matter

4. Claims 1-19 and 22-33 are allowed.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric D Culbreth whose telephone number is 703/308-0360. The examiner can normally be reached on Monday-Thursday, 9:30-7:00 alternate Fridays off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Dickson can be reached on 703-308-2089. The fax phone numbers for the organization where this application or proceeding is assigned are 703/746-3508 for regular communications and 703/308-2571 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Eric D Culbreth
Primary Examiner
Art Unit 3616

Eric Culbreth
5/13/03

ec
May 13, 2003